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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MANUEL SANTANA-ZEPEDA,
12 Movant-Defendant,
13 v.
14 UNITED STATES OF AMERICA,
15 Respondent-Plaintiff.

Civ. Case No. 11cv2111 BTM
Crim. Case No. 11cr980 BTM

ORDER DENYING § 2255 MOTION

16 Defendant Manuel Santana-Zepeda has filed a motion to reduce his sentence under
17 28 U.S.C. § 2255. For the reasons discussed below, Defendant's motion is **DENIED**.
18

19 **I. BACKGROUND**
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21 On May 4, 2011, pursuant to a Plea Agreement, Defendant entered a plea of guilty
22 to Count One of the Information (violating 8 U.S.C. § 1326(a) and (b)).

23 On August 26, 2011, Defendant was sentenced to an 8-month term of imprisonment
24 and 2 years of supervised release. Judgment was entered on September 6, 2011.

25 **II. DISCUSSION**
26

27 In his motion, Defendant argues that his sentence should be reduced because due
28 to his status as a deportable alien, he is ineligible for certain programs and benefits that are
available to United States citizens.

1 Defendant is barred from arguing for a reduction of his sentence under the terms of
 2 the Plea Agreement. The Plea Agreement provided that the sentence was within the sole
 3 discretion of the sentencing judge and that Defendant understood that the sentencing judge
 4 may impose the maximum sentence provided by statute. (Plea Agreement ¶ 9.) Defendant
 5 and the Government agreed that Defendant's Adjusted Offense Level was 8, but reached no
 6 agreement on Criminal History Category. (Plea Agreement ¶¶ 4, 7.)

7 The Plea Agreement further provided: "In exchange for the Government's concessions
 8 in this plea agreement, *defendant waives, to the full extent of the law, any right to appeal or*
 9 *to collaterally attack the conviction and sentence . . . unless the Court imposes a custodial*
 10 *sentence above the greater of the high end of the guideline range recommended by the*
 11 *Government pursuant to this agreement at the time of sentencing or statutory mandatory*
 12 *minimum if applicable. "* (Plea Agreement ¶ 11) (emphasis added).

13 The Government recommended a guideline range of 10 to 16 months based on the
 14 Adjusted Offense Level of 8 and a Criminal History Category of IV. (Gov't Sentencing
 15 Summary Chart (Doc. No. 21).) The Court sentenced Defendant to 8 months, the sentence
 16 requested by defense counsel.

17 At the sentencing hearing, the Court confirmed that Defendant understood that he was
 18 waiving his right to collateral attack:

19 **The Court:** Have you waived your right to ever attack the sentence and
 20 conviction?

21 **Defendant:** Yes.

22 A waiver of appeal and/or collateral attack of a conviction is enforceable if voluntarily
 23 made. United States v. Pruitt, 32 F.3d 431, 433 (9th Cir. 1994). If ineffective assistance of
 24 counsel renders the plea agreement containing the waiver involuntary, the defendant may
 25 appeal or collaterally attack his sentence. See Washington v. Lampert, 422 F.3d 864, 871
 26 (9th Cir. 2005) (holding that "a plea agreement that waives the right to file a federal habeas
 27 petition under 28 U.S.C. § 2254 is unenforceable with respect to an IAC claim that
 28 challenges the voluntariness of the waiver"). See also Pruitt, 32 F.3d at 433 (expressing

1 “doubt” that such a waiver could be enforceable in a § 2255 context).

2 Defendant does not argue that his attorney was ineffective in advising him regarding
3 the Plea Agreement or that his plea was otherwise involuntary. Accordingly, Defendant is
4 bound by the terms of the Plea Agreement and is precluded from mounting a collateral attack
5 on his sentence. Defendant’s motion is therefore denied.

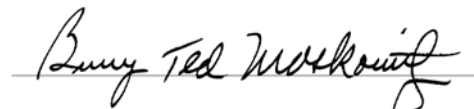
6 Finally, even if the Court were to consider his claim it would be denied. Had defense
7 counsel sought a departure or sentence reduction on the grounds Defendant now suggests,
8 the Court would have denied it as it has done numerous times.

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10 **III. CONCLUSION**

11 For the reasons discussed above, Defendant’s motion to reduce sentence is **DENIED**.
12 The Court **DENIES** a Certificate of Appealability. The Clerk shall enter judgment accordingly.

13 **IT IS SO ORDERED.**

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15 DATED: October 5, 2011

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17 Honorable Barry Ted Moskowitz
18 United States District Judge
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